



Stratham Zoning Board of Adjustment
Meeting Minutes
May 23, 2023
Stratham Municipal Center
Time: 7:00 pm

Members Present: Drew Pierce, Chair
Brent Eastwood, Vice Chair
Bruno Federico, Member
Jameson Paine, Member
Frank MacMillan, Member (arrived at 7:05 pm)
Nicolas Garcia, Alternate

Members Absent: None

Staff Present: Mark Connors, Director of Planning and Community Development

1. Call to Order/Roll Call

Mr. Pierce called the meeting to order at 7:00 pm and took roll call. Mr. Pierce appointed Nicolas Garcia as a voting member for this meeting and hearing.

2. Approval of Minutes

a. May 3, 2023 training

Mr. Paine made a motion to approve the May 3, 2023 training meeting minutes. Mr. Garcia seconded the motion. All voted in favor and the motion was approved.

b. May 9, 2023 ZBA meeting

Mr. Eastwood noted a typographical error on line 103 - "Mr. Brentwood" should be "Mr. Eastwood". Mr. MacMillan also corrected the spelling of his last name.

Mr. Eastwood made a motion to approve the May 9, 2023 meeting minutes as amended. Mr. Paine seconded the motion. All voted in favor and the motion was approved.

3. Public Hearing:

- a. Case #669: Jonathan Newman of 12 Breslin Farm Road, Stratham, NH, Tax Map 3 Lot 78, Zoned Residential/Agricultural.** Request for approval of a variance from Section 8.9.a.iii.1 of the Stratham Zoning Ordinance to construct a shed encroaching approximately 12 feet within the 50-foot vegetated buffer strip of a Residential Open Space Cluster Development.

Mr. Pierce explained the meeting process and requested that Mr. Newman present his application. Mr. Newman is looking to construct a 12 feet by 16 feet Reeds Ferry shed that will encroach 12 feet at the greatest point into the 50-foot vegetated no cut buffer zone. There are several limitations of the property that have forced him to select this location. Mr. Newman provided numerous photographs of the slope of the property and the chosen location has the least slope. Most of the property suffers from a 3 to 6-foot grade. It slopes from the rear foundation to the wood line. Without an extensive investment in footings or a foundation prior to placement of the shed, he is limited to the proposed location as a last resort. Mr. Newman believes a 50-foot no cut buffer seems extreme and compared it to a 25-foot buffer for commercial properties abutting residential properties. He appreciates the effort to create the 50-foot buffer for cluster developments and noted that the Town of Dover has only a 10-foot no cut buffer for cluster developments. Mr. Newman added that he is encroaching only 12 feet and leaving 38 feet seems to be an ample buffer between properties. He notes there is no dwelling abutting the proposed shed location and the neighboring property has a 7-acre conservation easement. Mr. Newman believes it is zoned for agricultural use but there is no such use on the property. He addressed the written comments submitted by the neighbor by stating that the neighbor resides just off Stratham Heights Road and in terms of visibility of the shed, in theory they may be able to see the shed in the winter months, but outside of that time, there is thick vegetation and there will be no visibility from the neighbor. With regards to cutting of trees or vegetation, there is no requirement to place the shed. Mr. Newman stated that the developer may have over cut into the buffer, but it has effectively left an opening where only a few small samplings would be removed.

Mr. MacMillan asked Mr. Connors for clarification on what a no cut buffer means. Does it mean one cannot cut trees or brush or grass? Mr. Connors read ordinance requirements. "A vegetated buffer strip of at least fifty feet shall be maintained along the external perimeter or property line of the Residential Open Space Cluster Development to minimize potential impacts on abutting properties. The natural vegetation shall be retained or, if required, vegetation of a type and amount as deemed appropriate by the Planning Board shall be planted and maintained. No dwelling, accessory structure, street or parking area shall be permitted within the designated buffer area. Streets that serve as access to the development, walls, underground utilities, and drainage structures may be located within this buffer. Said buffer strip shall not be included in the calculation of open space for the development." Mr. Connors added that existing vegetation cannot be removed, it is a no-cut no-disturb buffer similar to wetlands, so it should also not be mowed. Mr. MacMillan commented that the buffer area only abuts the south side of the development and it only extends along one side of the subject property, the side that abuts 94 Stratham Heights Road. Mr. Connors explained that the buffer requirement does not apply to abutters that are part of the development nor to the open space areas of the development.

Mr. Newman asked how the distance of a no cut buffer is determined. Mr. Connors replied it is set in the Zoning Ordinance. Mr. Newman asked if that is specific to Stratham. Mr. Connors and multiple board members replied yes and explained that the ordinance was voted on by the Town residents. Mr. Connors noted that the Board cannot control the ordinance, they can only determine if a project meets the five criteria for a variance. Mr. Newman asked for clarification on the 50-foot buffer and the 2-acre minimum lot size. Multiple board members replied that the 50-foot buffer is a tradeoff to allow smaller lots. Mr. Newman commented that if he had two acres, he believes it would be easier to find a location for the shed.

Mr. Pierce asked if Mr. Newman has the largest lot in the neighborhood. Mr. Newman replied yes by approximately 0.3 acres. Mr. Federico asked if Mr. Newman's lot is 0.96 acres. Mr. Newman

confirmed.

Mr. Pierce asked if a shed company has reviewed the property and if there is room and a flat area within the fenced area. Mr. Newman replied that when he learned of the no cut buffer he looked at the fenced area but the elevation drops from the front right corner to the back left corner by about 1.5 feet which would require significant grading and is not feasible with the fence already in place. Mr. Newman also looked at an area outside the fence and the buffer area but the grade from the foundation to the wood line drops about 3.5 to 4 feet. Mr. Pierce asked if that area is the area to the left of the swing set. Mr. Newman replied yes.

Mr. Eastwood asked about the driveway side. Mr. Newman replied that there is a 20-foot drainage easement there and the Town came out last fall to provide measurements for a shed location and there is no place without removing the fence and also the grade on that side is probably about 2 feet. That area was Mr. Newman's first choice location until the Town showed him the extent of the drainage easement. Mr. Eastwood commented that he drove by Mr. Newman's property and noted that he saw the neighbor's shed on the opposite side of the drainage easement and wondered if a mirror image was possible. Mr. Newman stated that was his original intention until he found out the extent of the drainage easement.

Mr. Pierce asked how close is the edge of the 50 feet buffer to the fence or rather how close will the shed be to the fence. Mr. Newman replied the shed will be approximately one to two feet to the fence.

Mr. Paine asked if the size of the shed is realistic for the challenges of the lot. Mr. Newman replied that is a valid question for a condition of approval. Mr. Paine replied he wasn't thinking in terms of condition of approval but in terms of meeting the zoning regulations. Mr. Newman replied the smallest size for his needs would be 10 feet and because that is only a 2-foot difference, he is requesting his first choice size. He doesn't believe that a 12-foot vs. a 10-foot encroachment changes the dynamic. Mr. Paine questioned the 16-foot length and if there is an ability to decrease that and change how the shed lays out on the property. Mr. Newman said the minimum would be 14 feet and again a 2-foot difference will not affect the encroachment. The only dimension that will truly affect that would be the 10 feet vs. 12 feet. Mr. Pierce asked what Mr. Newman means by minimum. Mr. Newman replied that is the minimum size available for the model shed he chose. The manufacturer offers smaller sheds but he has too much equipment for a smaller shed including a zero turn mower, a generator, and a lot of kid's toys. The only other option is to add a third garage bay but he will run into issues with the drainage easement.

Mr. Paine asked if he can put the shed or an addition on the back of the house and what does Mr. Newman have for ground configuration in the back. Mr. Newman replied there is electrical from the transformer along the rear foundation. Space wise it could be feasible. They have a paver walkway that would be in the way and it would be a smaller version of a third garage bay.

Mr. Pierce asked if the shed can be rotated clockwise to get the entire shed in the buildable area. Mr. Newman replied that the grade change is substantial. Mr. Connors commented that Mr. Newman is allowed to bring in fill. He recognizes that it is more work, but it is an option.

Mr. Pierce asked if the access to the shed will be from the no cut buffer. Mr. Newman replied no, that access will be towards the yard and that he will remove three fence panels and have the fence go into the sides of the shed. Mr. Pierce asked if Mr. Newman will maintain grass or anything

143 behind the shed. Mr. Newman replied no, that it is untouched now.

144
145 Mr. Federico asked if there is any vegetation there now. Mr. Newman there are just a few saplings.

146
147 Mr. Pierce asked for confirmation that there will be some cutting of vegetation to install the shed.
148 Mr. Newman replied yes, saplings, but nothing established. Mr. Pierce asked Mr. Connors if
149 cutting of vegetation includes saplings. Mr. Connors replied yes, but if the variance is approved
150 that cutting would be approved and the bigger issue is having the structure in the buffer area.

151
152 Mr. Federico asked for confirmation that the shed is 192 square feet. Mr. Newman confirmed. Mr.
153 Federico asked if Mr. Newman calculated how many square feet he is encroaching. Mr. Newman
154 replied he has not. Mr. Federico calculates it to be less than a third. Mr. Newman agrees.

155
156 Mr. Macmillan asked for clarification on the fence panel removal. Mr. Newman replied that two
157 panels will be cut in half and the posts will be relocated against the shed.

158
159 Mr. Macmillan asked if it is a viable plan to rotate the shed clockwise as previously suggested. Mr.
160 Newman replied he would still suffer from the elevation drop. Mr. Federico commented that from
161 the pictures submitted the elevation is at least a 1-foot drop. Mr. Newman agrees. Mr. Federico
162 stated that the ground within the fence must not be level. Mr. Newman confirmed that is the case
163 and is what the developer did for all of the homes. He added it is good for drainage, but not for
164 locating a shed.

165
166 Mr. Connors passed around two pictures he took showing the rear portion of the property.

167
168 Mr. Pierce sought clarification on some of the property slope picture locations. Mr. Newman
169 addressed his questions.

170
171 Mr. Paine made an observation that the driveway extends to a two-car garage and behind that are
172 ornamental grasses. He asked if there is a retaining wall there. Mr. Newman replied no it is just a
173 flower bed along with grasses and arborvitaes. Mr. Paine asked if that is a viable location for the
174 shed. Mr. Newman replied no because the elevation drops from the front corner of the fence to the
175 back at least 5 feet.

176
177 Mr. Pierce asked what the issue is with putting a shed on an area with a high elevation drop. Mr.
178 Newman replied the cost to build up a foundation. Mr. Pierce asked what kind of foundation would
179 be used. Mr. Newman replied that based on the drop, perhaps a retaining cinder block foundation.
180 A 6 by 6 landscape lumber can be used, but will not hold over time and it is subject to rot. To hold
181 up a shed something with footings would be needed. He has not priced it out, but guesses it could
182 be close to the cost of the shed.

183
184 Mr. Pierce read the comment email from the abutter, Jean Frances. The email is part of the ZBA
185 file and includes a request to replant where the buffer was disturbed by the developer and to
186 relocate the shed to outside of the buffer. Mr. Newman addressed the comments. He believes if
187 there was such concern over wildlife, then Ms. Frances would not have dumped a 275 gallon home
188 heating oil tank on the property line. He has never mentioned it to Ms. Frances and he has no
189 turmoil with her. He does not understand the spirit of her comments and he thinks her email was
190 not 100% accurate. Mr. Newman empathizes with the work put forth by the Board and Ms. Frances
191 in creating the 50-foot no cut buffer, but he does not believe that many of her arguments are valid.

192 Regarding farming, there has been no effort to farm in the conservation easement. The only
193 farming is immediately next to their dwelling in a small greenhouse. Mr. Connors notes that Ms.
194 Frances has a right to comment and the Board cannot validate her statements. The Board's role is
195 not to determine if the project is good or bad, and instead to determine if the project meets the
196 criteria. Mr. Connors suggests that Mr. Newman focus his comments on that.

197
198 Regarding Ms. Frances' comment about creating a precedent, Mr. Garcia asked for confirmation
199 that applications are reviewed in a vacuum and that there is not precedent in zoning decisions.
200 Multiple board members confirmed that is the case.

201
202 Mr. Pierce asked Mr. Connors for the Town's opinion. Mr. Connors replied that when
203 developments are approved they are reviewed by the Conservation Commission who frequently
204 comments but this buffer is set in the ordinance. The Conservation Commission is meeting
205 tomorrow and the Board has the option to ask their opinion. Mr. Connors continued that because
206 there was a lot of talk about the property limitations, the Board has the right to schedule a site walk
207 before making a decision. The Board can also add a condition that Mr. Newman add plantings
208 behind the shed if the variance is granted.

209
210 Mr. Garcia asked if the Conservation Commission review would be just to discuss the rationale
211 behind the 50-foot no cut buffer and not a negotiation as to what the buffer should be. Mr. Connors
212 replied that the Conservation Commission does not have the right to make a decision only a right
213 to offer comments.

214
215 Mr. Pierce asked if the Planning Board or Conservation Commission provided comments. Mr.
216 Connors replied no and that the Conservation Commission meets only once per month and he did
217 not want to delay the hearing.

218
219 Mr. Pierce asked Mr. Paine about his experience on the Planning Board when the development
220 was planned. Mr. Paine replied there was substantial concern from the farmer to the side about
221 water quality with the number of homes and the runoff from the development. Some of the runoff
222 was addressed with French drains around the homes, stormwater runoff basins, etc.

223
224 **Mr. Pierce made a motion to close the public portion of the meeting and open board**
225 **deliberation. Mr. Federico seconded the motion. All voted in favor and the motion was**
226 **approved.**

227
228 Mr. Federico commented that there are two lots in the subdivision that are peculiar compared to
229 the other lots. They are pork chop lots with very small frontage presumably because they have
230 steep grades. He added that most of the parcels with the 50-foot no cut buffer are the only lots with
231 a good portion of their property with the buffer. He thinks the Board should consider that the lot
232 in question is different than the majority of the other lots and the grade differential can be seen
233 drastically in the fence in pictures. Mr. Federico has tried to level ground for construction and he
234 agrees it is very expensive but it is an option. He continued that the reason he asked about the
235 square footage of the shed is because he estimates an encroachment of about 60 to 70 square feet
236 and from the pictures it doesn't appear there is much vegetation other than trees that bloom during
237 the spring, summer, and fall. Mr. Federico's recommendation that if approved, the shed be
238 screened with some vegetation as an offset.

239
240 Mr. Eastwood commented that it is unfortunate that the 50-foot buffer was included in the lot and

that it wasn't an open space like the rest of the borders. He'd like to see the zoning ordinance followed as written but wishes there was a solution that wasn't so cumbersome to follow it.

Mr. Garcia agrees with Mr. Eastwood and will save comments for when the Board discusses the criteria.

Mr. Pierce stated it might be beneficial to perform a site visit and that the applicant is essentially asking to amend the zoning ordinance which he does not believe is within the Board's purview. He would also like input from the Planning Board and the Conservation Commission.

Mr. Garcia stated that he thinks that granting this would undermine the purpose of the Conservation Commission regardless of the Board's feelings on the 50-foot buffer.

Mr. Pierce stated that this project might not set a precedent with future Board decisions, but might set a precedent with other neighbors making applications to the Board and give people an undo sense of a sort of entitlement. It might also give concern to abutters of future cluster subdivisions.

Mr. Pierce stated that the Board can go through the five criteria, but thinks before doing so the Board should perform a site visit.

Mr. Paine thinks the Board should seek an opinion from the Conservation Commission and make a decision based on their insight. Mr. Garcia asked what would the Board ask the Commission, is it the rationale behind the buffer? Mr. Paine replied the question is if the Conservation Commission has a concern with the impact into the buffer. Mr. Pierce agrees with the question to the Conservation Commission and also thinks there should be a site walk. Others agree.

Mr. Pierce asked Mr. Connors what are the next steps. Mr. Connors replied that the next Board meeting is in three weeks so the Board should schedule a date tonight. The Board scheduled a site walk for 4:30 pm on Tuesday, June 6, 2023.

Mr. Pierce made a motion to continue to the June 13th ZBA meeting pending a site walk and getting feedback from the Conservation Commission. Mr. Eastwood seconded. All voted in favor and the motion was approved.

Mr. Pierce thanked Mr. Newman for attending the meeting. Members asked Mr. Newman to stake the 50-foot buffer and the shed location for the site visit.

4. Other Business

a. 2023 meeting schedule

Mr. Connors presented a revised meeting schedule for the remainder of 2023 that removes the December 26, 2023 meeting presuming it will be difficult to get a quorum for that week. That leaves only one meeting in December.

Mr. Pierce made a motion to accept the revised 28-day Zoning Board of Adjustment 2023 schedule for regular board meetings. Mr. Paine seconded. All voted in favor and the motion was approved.

290 **5. Adjournment**

291

292 **Mr. Pierce made a motion to close the meeting at 7:56 pm. Mr. Paine seconded. All voted in**
293 **favor and the meeting was adjourned.**